

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOEL PENA,

Plaintiff,

-v.-

ROC NATION LLC et al.,

Defendants.

23 Civ. 07009 (JHR)

ORDER

JENNIFER H. REARDEN, District Judge:

Plaintiff Joel Pena brings this action, *pro se*, for copyright infringement, unjust enrichment, and conversion against Defendants Roc Nation LLC (“Roc Nation”), S. Carter Enterprises LLC (“Carter Enterprises”) and Daniel Day (“Day”). For the reasons set forth below, the Court dismisses the action without prejudice against Defendant Daniel Day pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

BACKGROUND

On August 9, 2023, Plaintiff initiated this action by filing the Complaint. *See* ECF No. 1 (Compl.). On August 11, 2023, the Court referred the action to Magistrate Judge Stewart D. Aaron for general pretrial purposes. *See* ECF No. 4. On September 29, 2023, Defendant Carter Enterprises appeared. *See* ECF No. 6. On November 3, 2023, Judge Aaron issued an Order stating that “the ordinary time for service [] expire[s] on November 7, 2023,” ECF No. 15 at 1 (citing Fed. R. Civ. P. 4(m)), and directing Plaintiff to file, by November 13, 2023, “a letter regarding the status of service of defendants Roc Nation LLC and Daniel Day,” *id.*

On November 6, 2023, Plaintiff filed a letter updating the Court on his efforts to serve Roc Nation and Day and “requesting that the Court grant [him] an additional thirty days to

effectuate service” on those Defendants. ECF No. 16. On November 8, 2023, Judge Aaron granted Plaintiff’s request. *See* ECF No. 17.

On December 30, 2023, Plaintiff filed a letter stating that, “despite [his] diligent efforts, effectuating service on Defendant Roc Nation LLC has been difficult.” ECF No. 22 at 2. Plaintiff did not address the status of service on Defendant Day. *See id.* On January 9, 2024, following a telephone conference with Plaintiff and Defendant Carter Enterprises, Judge Aaron extended the deadline for Plaintiff to serve Roc Nation and Day to February 8, 2024. ECF No. 24. On February 6, 2024, Plaintiff completed service on Roc Nation. ECF No. 31.

On March 7, 2024, after another telephone conference with the parties, Judge Aaron entered an Order extending the deadline for Plaintiff to serve Day to March 30, 2024. ECF No. 34 ¶ 2. In that Order, Judge Aaron cautioned that, “[a]s the Court notified Plaintiff during today’s conference, if Defendant Day is not served by [March 30, 2024], Plaintiff’s claims against Defendant Day are subject to dismissal by the Court without prejudice pursuant to Federal Rule of Civil Procedure 4(m).” *Id.*

Plaintiff has not filed proof of service upon Day.

LEGAL STANDARD

Pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, a “plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m).” Fed. R. Civ. P. 4(c)(1). Rule 4(m) requires that service be effected “within 90 days after the complaint is filed.” Fed. R. Civ. P. 4(m). Rule 4(m) further provides that, “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” *Id.*; *see Aaron v. Keyser*, No. 21 Civ. 05258 (PMH), 2023 WL 3466170,

at *7 (S.D.N.Y. May 15, 2023) (citations omitted) (“Federal Rule of Civil Procedure 4(m) permits the Court to dismiss an action without prejudice against a defendant who was not served.”).

DISCUSSION

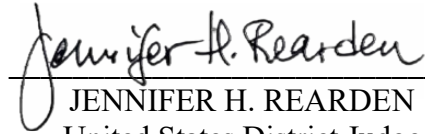
Plaintiff has received three extensions of time to complete service on Defendant Day, totaling more than 60 additional days. Judge Aaron’s March 7, 2024 Order notified Plaintiff that, “if Defendant Day [wa]s not served by [March 30, 2024], Plaintiff’s claims against Defendant Day [would be] subject to dismissal by the Court without prejudice pursuant to Federal Rule of Civil Procedure 4(m).” ECF No. 34 ¶ 2. Nevertheless, Plaintiff did not serve Day by March 30, 2024, nor has he done so since then.

Accordingly, the Court hereby DISMISSES the claims against Defendant Day without prejudice pursuant to Rule 4(m). *See Horizon Group USA, Inc. v. Innovative Designs, LLC*, No. 22 Civ. 1241 (JPC) (S.D.N.Y. July 28, 2022) (dismissing case under Rule 4(m) after the court’s order to show cause had “warn[ed] Plaintiff that [failure to] . . . show[] good cause why such service was not made within the 90 days” by stated deadline would result in dismissal).

The Clerk of Court is directed to terminate Defendant Daniel Day from this action.

SO ORDERED.

Dated: June 17, 2024
New York, New York


JENNIFER H. REARDEN
United States District Judge